

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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DATE FILED: 12/22/2024

UNITED STATES OF AMERICA,

Plaintiff,

-v-

ANTHEM, INC.,

Defendant.

20 Civ. 2593 (ALC) (KHP)

ORDER

WHEREAS, Plaintiff the United States of America (the “United States” or “Government”) has brought this action against Defendant Anthem, Inc. (“Anthem”), pursuant to the False Claims Act, 31 U.S.C. § 3729 *et seq.*;

WHEREAS, this case is presently in discovery;

WHEREAS, Anthem has requested that the United States produce to Anthem, among other things, certain documents that the United States initially withheld on deliberative process privilege grounds from a defendant in a separate litigation, but was subsequently ordered to produce to the defendant in that case, *United States of America ex rel. Osinek v. Kaiser Permanente, et al.*, No. 13 Civ. 3891 (N.D. Cal.) (ECF No. 375) (the “*Osinek* Order”);

WHEREAS, Anthem has subsequently requested that the United States produce three categories of documents among those required to be produced pursuant to the *Osinek* Order: (1) questionnaires and “follow up” communications between CMS and HHS-OIG related to such questionnaires, including CMS’ responses; (2) communications between CMS, on the one hand, and HHS-OIG, on the other hand, including all notes and summaries of meetings; and (3) all drafts of HHS-OIG Report No. OEI-03-17-00470 (the “Withheld Documents”);

WHEREAS, Anthem has represented that if the Government produces the Withheld Documents to Anthem, it will not seek to obtain in this litigation: (1) any further documents from the United States responsive to Request for Production 26 from its requests for production dated March 17, 2023; and (2) any further documents related to HHS-OIG Report Nos. OEI-03-18-00470, OEI-03-17-00471, or OEI-03-17-00474;

WHEREAS, the Court has determined that discovery in this case will be facilitated by the Government's production of the Withheld Documents, subject to the Court's other rulings and the parties' agreements on discovery in this matter, and Anthem has communicated to the Government that it will not object to the relief requested.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Government shall produce the Withheld Documents to Anthem without redactions for deliberative process privilege, and such productions shall not be considered voluntary and shall not constitute a waiver of the deliberative process privilege in this litigation or otherwise.
2. The Government may apply appropriate designations to any of the Withheld Documents pursuant to the operative Protective Order in this case (ECF No. 96), including by designating Withheld Documents pursuant to the terms of the Protective Order.
3. Nothing in the Order shall be construed to require the production of any documents or information other than the Withheld Documents themselves. For the avoidance of doubt, this Order does not (i) require production of other documents pertaining to the subject matter of the Withheld Documents or documents containing substantively similar information as the Withheld Documents, or (ii) preclude the

Government from applying redactions to the Withheld Documents for any other claimed privilege or protection.

4. Anthem shall not seek to obtain in this litigation any other documents (1) responsive to Request for Production 26 from its requests for production dated March 17, 2023, and (2) related to HHS-OIG Report Nos. OEI-03-18-00470, OEI-03-17-00471, or OEI-03-17-00474.

SO ORDERED:

Dated: New York, New York
December 22, 2024



HON. KATHARINE H. PARKER
United States Magistrate Judge